

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP245

Cir. Ct. No. 2012CV127

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CONNIE KENNEDY,

PLAINTIFF-APPELLANT,

V.

JOHN KENNEDY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Columbia County:
W. ANDREW VOIGT, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 PER CURIAM. This appeal arises out of a civil action for conversion initiated by Wisconsin resident Connie Kennedy against California resident John Kennedy. The sole issue on appeal is whether the circuit court properly dismissed the action for lack of personal jurisdiction. For the reasons

discussed below, we conclude that John lacked sufficient contacts with this state to satisfy due process. Accordingly, we affirm.

BACKGROUND

¶2 Connie and her husband Richard Kennedy were both listed on the Wisconsin title of a recreational motor vehicle (RV) that was located in California at the time of Richard's death in Wisconsin on September 30, 2010. Connie's stepson John was the trustee of the Richard A. Kennedy Trust, although it is not clear from the materials before us whether that was a testamentary trust and/or whether John was also serving as the personal representative of his father's estate. In any event, within weeks of Richard's death, John, who lived in California, called Connie in Wisconsin and asked her to send him the keys to the RV so that he could sell it. She did so.

¶3 John then arranged for the sale of the RV to a California buyer. On January 18, 2011, the buyer provided a cashier's check payable to Richard A. Kennedy or Connie J. Kennedy for \$20,235. On January 27, 2011, John and Connie both signed a notarized document in California stating that, by cashing the check, Connie would acknowledge receiving a partial distribution of \$25,000 that was due to be paid to her under the trust. Also in California, at some unspecified date in January, presumably at or around the time the check was issued, Connie signed over the title to the RV at John's direction. The State of Wisconsin transferred the title of the RV to the California buyer on April 21, 2011.

¶4 Connie's conversion action alleges that the proceeds of the California sale should have gone to her directly, as the sole owner of the RV after Richard's death, rather than being funneled through the trust and counted against her distribution. Connie further claims that she did not know that her name was on

the RV's title until after Richard's death, when John presented it to her and demanded that she sign it—and that she did not understand the significance of that fact until after signing the distribution agreement.

¶5 Aside from making the phone call to Connie to ask for the keys to the RV so that he could sell it, John's only contacts with Wisconsin were occasional phone calls to his father and a single trip to this state for his father's wedding.

STANDARD OF REVIEW

¶6 Whether the established facts provide a court with personal jurisdiction over a nonresident defendant is a question of law that this court reviews de novo. *Johnson Litho Graphics of Eau Claire, Ltd. v. Sarver*, 2012 WI App 107, ¶6, 344 Wis. 2d 374, 824 N.W.2d 127. We will construe any ambiguities in Wisconsin's long-arm jurisdiction statute, WIS. STAT. § 801.05 (2011-12),¹ liberally in favor of jurisdiction. *Johnson Litho Graphics*, 344 Wis. 2d 374, ¶6.

DISCUSSION

¶7 A determination as to whether a court of this state has personal jurisdiction over a nonresident defendant involves a two-step inquiry. First, the plaintiff bears the burden of showing that there are statutory grounds for the court to exercise jurisdiction under at least one of the subsections in WIS. STAT. § 801.05. *Johnson Litho Graphics*, 344 Wis. 2d 374, ¶6. Because § 801.05 was

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

intended to codify the minimum contacts test for the due process clause of the Fourteenth Amendment, a showing that the statute applies also creates a prima facie case that the Due Process Clause of the Fourteenth Amendment has been satisfied. *Johnson Litho Graphics*, 344 Wis. 2d 374, ¶15. Second, once the plaintiff's burden has been met, the defendant is afforded an opportunity to show that exercising statutory jurisdiction would nonetheless violate due process principles of fair play and substantial justice. *Id.*, ¶¶15-16.

¶8 Personal jurisdiction under Wisconsin's long-arm statute can be either general or specific. *Rasmussen v. General Motors Corp.*, 2011 WI 52, ¶15, 335 Wis. 2d 1, 803 N.W.2d 623. If general jurisdiction is established under WIS. STAT. § 801.05(1) based upon a defendant's local presence in this state, the defendant may be brought before Wisconsin courts for claims that are unrelated to the defendant's activities here. *Rasmussen*, 335 Wis. 2d 1, ¶¶15 and 18. Other subsections of WIS. STAT. § 801.05 provide for the exercise of specific jurisdiction, allowing the defendant to be sued here when the claim for relief itself arises out of or is substantially connected to the defendant's contacts with Wisconsin. *Rasmussen*, 335 Wis. 2d 1, ¶¶15 and 18 n.20.

¶9 Here, Connie contends that WIS. STAT. § 801.05 provides personal jurisdiction over John under subsections (1)(d), (4)(a), and (5)(d). We consider the application of each of these subsections to this case dubious for most of the

same reasons discussed by the circuit court.² However, given our liberal construction of the long-arm statute, we will assume without deciding that Connie could establish statutory personal jurisdiction under one of them. We turn then, to the question of due process.

¶10 The test for determining whether exercising jurisdiction over a nonresident defendant comports with due process notions of fair play and substantial justice includes the following factors: (1) the quantity, nature, and quality of the defendant's contacts; (2) the source and connection of the cause of action with those contacts; (3) the interest of the forum state in adjudicating the dispute; (4) the interests of any affected states in judicial economy and furtherance of substantive social policies; and (5) the respective convenience or burden to the parties. *Rasmussen*, 335 Wis. 2d 1, ¶21; *Johnson Litho Graphics*, 344 Wis. 2d 374, ¶32.

¶11 Here, the quantity of John's contacts with Wisconsin was limited and the nature of those contacts all stemmed from his father and stepmother's residence in Wisconsin, rather than independent activities of his own here. Only one of the contacts—the phone call to Connie after Richard's death—bore any relation whatsoever to Connie's conversion action, and that connection was

² WISCONSIN STAT. § 801.05(1)(d) provides general jurisdiction when a defendant has a local presence in this state, demonstrated by being “engaged in substantial and not isolated activities within the state.” The circuit court concluded that this section did not apply because John's occasional phone calls to his father, single call to his stepmother, and single visit to the state were “woefully insufficient” to establish John had engaged in substantial activities in this state. WISCONSIN STAT. § 801.05(5)(d) provides special jurisdiction when an action relates to “goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant's order or direction.” The circuit court concluded that this section did not apply because the thing of value at issue was the proceeds from the sale of the RV, not the key. The circuit court did not address the application of WIS. STAT. § 801.05(4)(a), which it appears Connie raised for the first time in a motion for reconsideration.

tangential. Neither the phone call nor the key was even mentioned in the complaint, which focused on the treatment of the proceeds from the sale of the RV, not the fact that John had obtained keys from Connie to effectuate the sale. Similarly, whatever interest the State of Wisconsin might have concerning the transfer of title to a vehicle registered in this state, it has no discernible interest in claims regarding what happened in California to the proceeds from the sale of that vehicle. California, on the other hand, has a much more direct interest in the conversion claim, since all of the substantial elements of the claim took place there. Finally, while it would obviously be inconvenient for either of the parties to litigate the matter in the other party's home state, Connie has a more substantial connection with California—where she and Richard had been spending half of their time in recent years—than John has with Wisconsin.

¶12 Considering all of these factors together, we are persuaded that it would be fundamentally unfair to require John to litigate in Wisconsin a claim that he converted funds from the sale of an RV, when both the sale and alleged conversion occurred in California. We therefore conclude that due process precludes exercising personal jurisdiction in this case.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

